

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
1998 Biennial Regulatory Review – Streamlined)	CC Docket No. 98-171
Contributor Reporting Requirements)	
Associated)	
With Administration of Telecommunications)	
Relay Service, North American Numbering)	
Plan, Local Number Portability, and Universal)	
Service Support Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
With Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

REPLY

The American Public Communications Council (“APCC”), pursuant to section 1.429 of the Commission’s rules, hereby replies to the May 12, 2003 Opposition of BellSouth, SBC and Verizon to APCC’s Petition for Reconsideration of the Commission’s *Waiver Order*.¹ In their opposition (“Opposition”), BellSouth, SBC and Verizon (“BOCs”) mischaracterize APCC’s petition (“Petition”) as a challenge to the

¹ *Federal-State Joint Board on Universal Service*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 (2003) (“*Waiver Order*”), 68 Fed. Reg. 15669 (Apr. 1, 2003).

Centrex/PBX equivalency policy. APCC does not challenge the policy but seeks reconsideration only to the extent required to prevent the BOCs from imposing charges on payphone service providers ("PSPs") when these charges are to subsidize Centrex customers.

The BOCs, pointing incorrectly to the equivalency policy, urge the Commission to reject APCC's Petition as "both procedurally and substantively deficient." Opposition at 2. The BOCs contend that APCC's Petition is procedurally deficient because the *Waiver Order* "merely maintains the *status quo* pending more full inquiries." Opposition at 2. The BOCs point to the *Waiver Order's* language that the waiver "does not represent a substantive change in Commission policy" and explain that "[e]ven before the interim waiver, carriers [under the equivalency policy] charged Centrex customers on a one-ninth ratio for universal service, and recovered the remaining eight-ninths of the assessment on an averaged basis from their customers." *Id.* However, as the BOCs acknowledge, the customer base which subsidizes Centrex customers has, at the BOCs' own request,² narrowed from all customers to just multi-line business line customers.³ Notwithstanding the BOCs' arguments to the contrary, this represents a substantive change in Commission policy that significantly affects PSPs.

The impact of this policy change is significant. In Pennsylvania, for example, by including payphones within the class of multi-line customers who bear the burden

² Petition for Interim Waiver filed February 6, 2003 by Verizon, SBC and BellSouth at 2-3.

³ According to the BOCs, the major increase in universal service fees that payphone service providers experienced as of April 1, 2003 is largely due to the fact that the *Waiver Order* "now allows carriers to recover the Centrex-based universal service charge only from multi-line business customers, whereas carriers previously were able to average universal service charges over all [their] customer lines." Opposition at n.2.

of subsidizing Centrex customers, Verizon has raised the universal service fee that PSPs must pay to \$.95 per line per month instead of a fee of \$.58 that PSPs would have been paying, thus raising the fee by more than 60 percent.

In short, the *Waiver Order* does not, as the BOCs contend, maintain the *status quo* pending the outcome of the issues in related proceedings, but represents a policy change that has had significant adverse impact on PSPs. APCC's action in seeking reconsideration of the *Waiver Order* is procedurally appropriate and, given that resolution of issues in related proceedings may be far off in the future, the Commission should grant the requested reconsideration immediately.⁴

Moreover, given the new services test prohibition on payphone lines subsidizing other services, a grant of APCC's requested reconsideration is required to keep the *status quo*. The *status quo* is that PSPs are not seeing a 60%+ increase in rates to subsidize large users. Indeed, it is anomalous to relieve residential users of the subsidy they formerly paid to Centrex users in order to encourage residential universal service, only to place an increased burden on the universal service of last resort – 24x7x365 on-demand, per use public payphones.

While the BOCs attempt to refute the proposition that payphone lines cannot be used to subsidize other services (Opposition at 4-5), their arguments are misplaced.

⁴ As support for their argument that the Petition is procedurally deficient, the BOCs cite *Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13758, ¶33 (1995) ("1995 Reconsideration of Interim Waiver Order"). In that proceeding, however, neither the petitioner "nor the other commenters raise any significant new arguments in support of [the] reconsideration petition that we have not previously addressed in the Interim Waiver Order." 1995 Reconsideration of Interim Waiver ¶ 22. By contrast, APCC in its Petition, has raised significant new issues concerning the impact of the *Waiver Order* on PSPs. Moreover, as APCC pointed out in the Petition (n.9), the petitions that resulted in the *Waiver Order* were not placed on public notice. Thus there was not an adequate opportunity to raise these issues prior to the release of the *Waiver Order*.

First, the BOCs focus on section 276(a), a provision that on its face bars only subsidies flowing from the BOCs' telephone exchange service to the BOCs' payphone service. Opposition at 4. Their argument is a red herring. APCC never mentioned Section 276(a) as support for its subsidy argument. APCC's subsidy argument is based on the new services test, which in turn stems from language in Section 276(b)(1)(C) that required the Commission to establish "nonstructural safeguards equal to those adopted in Computer III."⁵

Second, the BOCs read the new services test too narrowly. The new services test does, as the BOCs acknowledge,⁶ prohibit subsidies in the overhead loading factors used in pricing payphone line services. But the test is broader in scope. The test requires cost-based rates, and a subsidy to large business users is no part of cost-based rates.⁷

The BOCs other substantive arguments are similarly without merit. The BOCs point out that the Centrex/PBX equivalency policy has been in place since 1997 and "is necessary to preserve competitive neutrality between these services." Opposition at 3. Without the averaging permitted by the *Waiver Order*, the BOCs argue, they would have to increase the universal service fees they charge their Centrex customers. "This would result in a significant increase in universal service charges to [Centrex] customers and likely make Centrex unable to compete with PBXs because of regulatory fees. . . ." Opposition at 3-4.

⁵ The new services test was adopted in *Amendments to Part 69 of The Commission's Rules Relating to the Creation of Access Charge Sub-elements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd 4524, 4531-4532 (1991).

⁶ Opposition at 4.

⁷ See, e.g., *Wisconsin Public Service Commission Order Directing Filings*, Memorandum Opinion and Order, 17 FCC Rcd 2051, ¶ 42 (2002).

The BOCs completely mischaracterize APCC's Petition. APCC is not arguing that the BOCs must abandon Centrex/PBX equivalency for universal service fees. APCC's Petition only requests that the BOCs not be allowed to require PSPs to subsidize Centrex customers.⁸ Exempting PSPs from the Centrex subsidy will not disturb Centrex equivalency with PBXs. The one-to-nine ratio would remain in effect in calculating the fees applicable to Centrex lines; and the BOCs' Centrex offerings hardly will succumb to PBX competition, at least not as a result of differences in regulatory fees.⁹

Finally, the BOCs ignore APCC's point that the Commission already has taken a step in the right direction by proposing to assess PSPs any connections-based charge at the single business/residential line rate. Petition at 3-4. The Commission, on reconsideration of the *Waiver Order*, should take the next step in the same direction, and quickly, to reduce the universal service fees that BOCs (and other LECs) may charge PSPs to a level that eliminates PSP subsidy of Centrex customers.

⁸ APCC petition at 5.

⁹ Moreover, because payphone lines are a small percentage of total multi-line business lines, the result would be only a slight rise in the fees that both Centrex customers and PBX customers would pay. In Pennsylvania, for example, if Verizon excluded its approximately 70,000 payphone lines from the multi-line business lines that bear a monthly subsidy of \$248,832 and spread the subsidy over the other more than 600,000 non-Centrex multi-line business lines, the increase in the monthly multi-line business line universal service fee would be about \$.04 (*i.e.*, the fee would increase from \$.95 to about \$.99). See Verizon March 27, 2003 Transmittal No. 302, Description and Justification Workpaper USF-3 (Pennsylvania data for "Multi-Line Bus.-Other").

Dated: May 22, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allan Hubbard", written over a horizontal line.

Albert H. Kramer
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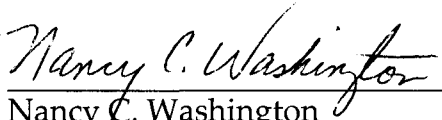
CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2003, the foregoing Reply was filed electronically and copies were sent by first-class mail, postage prepaid to the following:

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